

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LONNIE ENGLISH,

Plaintiff,

v.

Case Nos. 08-11171, 08-11428

DEPUTY WILLIAMS, and
DEPUTY ORSI,

HONORABLE AVERN COHN

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION
AND
GRANTING DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT
AND DISMISSING CASE**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983 claiming violations of the Eight Amendment. Plaintiff claims that defendants violated his constitutional rights by using excessive force during a fight plaintiff had with a prison employee. The matter was referred to a magistrate judge for all pre-trial proceedings. Defendants filed a motion to dismiss or for summary judgment. The magistrate judge issued a report and recommendation (MJRR), recommending that the motion be granted on the grounds that (1) plaintiff's claim is barred by Heck v Humphrey, 512 U.S. 477 (1994) or (2) defendants are entitled to qualified immunity as plaintiff has not made a showing of the denial of a constitutional right.

Before the Court is plaintiff's "Motion for Reconsideration and for Dismissal of the

Defendants Motion for Summary Judgment,” which the Court construes as objections to the MJRR. For the reasons which follow, the MJRR will be adopted, defendants’ motion will be granted and the case will be dismissed.

II.

The MJRR accurately sets forth the facts, some of which are repeated here. On January 27, 2007, plaintiff was a pretrial detainee at the Washtenaw County Jail. Plaintiff got into a fight with a fellow prisoner. In the course of breaking up the fight, plaintiff says defendants used excessive force on him, causing injury to his wrists and shoulder from being handcuffed too tightly, being elbowed in the neck, and suffering an eye injury. As a result of the incident, plaintiff was charged with and plead guilty to assault of a prison employee.

III.

The portions of the MJRR to which plaintiff objects are reviewed de novo. 28 U.S.C. § 636(b). The Court has reviewed plaintiff’s objections and finds no basis to reject the magistrate judge’s recommendation.

First, plaintiff’s objection regarding the case being reassigned to a new magistrate judge when the original magistrate judge recused themselves is not well-taken. The reassignment had nothing to do with the substance of plaintiff’s claims or otherwise impacted the case. Second, while plaintiff says he suffered additional injuries, in the form of humiliation, his allegations do not change the result. As explained in the MJRR, because plaintiff plead guilty to assaulting a prison employee, a finding that defendants used excessive force would impugn the validity of that conviction. As such, the magistrate judge was correct in finding that his claim is barred

by Heck. Moreover, plaintiff's injuries fail to rise to the level of a constitutional violation and therefore defendants are entitled to qualified immunity. Finally, although not addressed by the magistrate judge, defendants argued that plaintiff's failure to comply with discovery is an additional ground for dismissal. While the Court is not dismissing the case on this ground, it does note that defendants' argument is well-taken.

IV.

For the reasons stated above, the MJRR is ADOPTED. Defendants motion to dismiss or for summary judgment is GRANTED. This case is DISMISSED.

SO ORDERED.

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: November 3, 2009

I hereby certify that a copy of the foregoing document was mailed to Lonnie English, 168605, Kinross Correctional Facility, 16770 S. Watertower Drive, Kincheloe, MI 49785 and the attorneys of record on this date, November 3, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160